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Signature

**27662**

PATENT TRADEMARK OFFICE

**PATENT**  
Attorney Docket No.: MCS-116-99  
MSFT No.: 146907.01

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re the Application of: NACE et al.

Serial No.: 09/461,900

Group Art Unit: 2123

Filed: December 15, 1999

Examiner: W. THOMSON

For: **SERVER RECORDING AND CLIENT PLAYBACK  
OF COMPUTER NETWORK CHARACTERISTICS**

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**SUPPLEMENTAL APPEAL BRIEF**

In response to the Office Action dated January 6, 2005, the Appellants hereby request the reinstatement of the appeal. In support of this reinstatement request, the following remarks in this Supplemental Appeal Brief are presented. These remarks are presented in response to the rejections set forth in the above-referenced Office Action. This Supplemental Appeal Brief is presented in addition to, and not in place of, the remarks presented in the Appeal Brief, which is of record.

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**REVISED ISSUES**

Claims 1-40 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Landan (U.S. Patent No. 6,449,739).

Claims 1-40 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dantressangle (U.S. Patent No. 6,446,120).

Claims 1-40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Watanabe et al. (U.S. Patent No. 5,761,486).

**GROUPING OF CLAIMS**

Claims 1-5, 10-16, 18-23, 28-35, 39 and 40 stand or fall together, claims 6 and 7 stand or fall together, and claims 8, 9, 17, 24-27 and 36-38 stand or fall together.

**THE EXAMINER'S REVISED RATIONALE**

The Office Action dated January 6, 2005, noted that an updated search revealed new art. The Examiner's rationale for the §102(e) rejection of claims 1-40 as being anticipated by Landan was that for independent claims 1, 16, 20 and 30, Landan "teaches a network simulator (Figure 1 Items 40 & 36, Col. 1 Lines 32-41, Col. 2 Lines 30-50, Col. 7 Lines 47-57), a recording module with playback capability (Figure 1 Items 34, 344 & 38) the playback capability is functionally equivalent to the report generation (Figure 1 Item 42 & Figure 19 Item 100) and a data collection file (Figure 1 Item 38 *note the term "session files" these are functionally equivalent to the data collection files*), and filtering with a specific criteria (Figure 13 & Col. 13 Lines 37-50)." Moreover, for "Claims 2-15, 17-19, 21-38 and 40 please see Figures 1-20 and Columns 1-18."

The Examiner's rationale for the §102(e) rejection of claims 1-40 as being anticipated by Dantressangle was that for independent claims 1, 16, 20 and 39, Dantressangle "teaches a network simulator (Col. 5 Line 62), the playback capability is functionally equivalent to the report generation (Figures 11 & 12), and a data collection file

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(Figures 11 & 12), and filtering with a specific criteria (Col. 9, Lines 65-67, Col. 10 Lines 1-14)." Further, regarding "dependent Claims 2-15, 17-19, 21-38 and 40 please see Figures 1-13 and Columns 1-12."

The Examiner's rationale for the §102(b) rejection of claims 1-40 as being anticipated by Watanabe et al. was that for independent claims 1, 16, 20 and 39, Watanabe et al. "teaches a network simulator (Figure 1 Items 16, 16-1 & 16-2), with playback capability (Figure 4 & Col. 6 Lines 48-67, Col. 7 Lines 1-20), and a data collection file (Col. 9 Lines 25-32), and filtering with a specific criteria (Figure 4 Item S4 *note, that the writing of the data collected is based on 'judging' criteria which is the functional equivalent of filtering*). Regarding "dependent Claims 2-15, 17-19, 21-38 and 40 please see Figures 1-14 and Columns 1-14."

## **ARGUMENTS**

### **The Rejections of Claims 1-40 as Anticipated by Landan**

It is the Appellants' position that Landan lacks at least one feature of the Appellants' claimed invention. Namely, Landan lacks Appellants' claimed record module having a filter residing on a server. This patentable claimed feature is recited in each of the Appellants' claims.

On the other hand, Landan does not teach the Appellants' claimed record module having a filter residing on a server. As explained in detail below, most of the cited art lack a record module located on the server, and others of the cited art lack a record module having a filter. In both situations the cited art is lacking the Appellants' claimed record module having a filter residing on a server. Each of the rejections will now be discussed in greater detail.

### **Independent Claims 1, 16, 20, 34, 39 & 40**

Independent claim 1 of the Appellants' claimed invention includes a network simulation system for simulating network characteristics. The system includes a record module having a filter that resides on a server and records network characteristics. The

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system also includes a data collector file that stores the recorded network characteristics for playback on a playback machine. Independent claim 16, 20, 34, 39 and 40 also include this feature.

The filter is located on the record server. In this position, the filter uses its unique position to record and collect "more accurately the network characteristics being received by the server" and provide "more data on these network characteristics than other systems and techniques" (specification, page 3, lines 18-20). The filter actually captures network characteristics not present in server log files (specification, page 3, lines 16-18). This is due in part to the filter's location on the server. In particular, "[B]ecause of the way the ISAPI global filter was implemented into IIS the ISAPI global filter actually got called before ISS began processing the data. This feature can be useful for troubleshooting the network because by examining the log file [as recorded by the filter – this is different from the traditional server log files] it can be determined at what time a network problem occurred and what request may have caused the network problem" (specification page 24, lines 16-20). Thus, the Appellants' claimed invention includes a filter that resides on the record server that records network characteristics not captured in server log files.

In contrast, Landan et al. merely disclose a recorder that resides on a controller computer that is separate from the server. More specifically, as shown in FIG. 1 of Landan, recorder 34A is part of the controller that does not reside on the servers. Instead, the controller 34 resides on a controller computer 35, which is not the transactional server 30 (col. 5, lines 31-33). Landan et al. are missing the Appellants' claimed feature of record module having a filter that resides on a server and records network characteristics.

Because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Landan, the Appellants respectfully submit that the rejection of independent claims 1, 16, 20, 34, 39 and 40 under 35 U.S.C. § 102(e) as being anticipated by Landan has been overcome based on the arguments and analysis set forth above. Moreover, rejected claims 2-5 and 10-15 depend from independent claim 1, rejected claims 18 and 19 depend from independent claim 16, rejected claims 21-23

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and 28-33 depend from independent claim 20, and rejected claim 35 depends from independent claim 34 and therefore also are novel over Landan (MPEP § 2143.03).

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#### Dependent Claims 6 & 7

Dependent claim 6 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 1 and further includes having the record module include a log restriction/rolling module that is capable of limiting a size of the data collector file that stores the recorded network characteristics.

The log restriction/rolling module is "for taking action to prevent the recorded data from filling the available storage space on a server" (specification, page 4, lines 10-12). Log rolling "allows a user to preserve data by moving captured data to another machine without any loss of current data being received by the server" (specification, page 4, lines 12-14). In particular, "[A]n optional feature that may be included on the record module is log file rolling and termination. Recording of the requests being received by the recording server can occupy large amounts of memory and can impose serious burdens on the memory storage capabilities of the recording server. The log restriction/rolling module 440 provides an option to the user that allows the user to specify a time limit and a size limit on the data collector file to preserve memory resources. The file may either be deleted or closed and moved to another storage area (such as another machine or another hard drive)" (specification, page 20, lines 7-15).

In contrast, Landan does not disclose any type of log restriction/rolling module that is capable of limiting a size of the data collector file that stores the recorded network characteristics as claimed by the Appellants. Thus, because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Landan, the Appellants respectfully submit that the rejection of dependent claim under 35 U.S.C. § 102(e) as being anticipated by Landan has been overcome based on the arguments and analysis set forth above. Moreover, rejected claim 7 depends from claim 6 and therefore also is novel over Landan (MPEP § 2143.03).

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### Dependent Claims 8, 17, 24 and 36

Dependent claim 8 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 1 and further includes having the data collector file includes a log file, which stores header and tracking information, and a data file, which stores other types of data.

Dependent claim 17 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 16 and further includes having the data collector file include a log file, which stores the header data, and a data file, which stores the remainder of the network data.

Dependent claim 24 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 20 and further includes storing the network data in a data collector file that includes a log file, which stores the header data, and a data file, which stores the body data.

Dependent claim 36 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 34 and further includes having the data collector file include a log file, which stores header data, and a data file that stores any remaining network data.

The data collector file includes a log file, which is used to store header information received from a client during recording, and a data file, which is used to store other data. In particular, the "data collector file 460 includes a log file 470, for storing header and tracking information, and a data file 480, for storing other types of data" (specification, page 15, lines 21-23).

In contrast, Landan does not disclose any type data collector file having a log file, which stores header and tracking information, and a data file, which stores other types of

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data. Thus, because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Landan, the Appellants respectfully submit that the rejection of dependent claims 8, 17, 24 and 36 under 35 U.S.C. § 102(e) as being anticipated by Landan has been overcome based on the arguments and analysis set forth above. Moreover, rejected claim 9 depends from claim 8, rejected claims 25-27 depend from claim 24, and rejected claims 37 and 38 depend from claim 36 and therefore also are novel over Landan (MPEP § 2143.03).

### **The Rejections of Claims 1-40 as Anticipated by Dantressangle**

It is the Appellants' position that Dantressangle lacks at least one feature of the Appellants' claimed invention. Namely, Dantressangle lacks Appellants' claimed record module having a filter residing on a server. This patentable claimed feature is recited in each of the Appellants' claims.

### **Independent Claims 1, 16, 20, 34, 39 & 40**

Independent claim 1 of the Appellants' claimed invention includes a network simulation system for simulating network characteristics. The system includes a record module having a filter that resides on a server and records network characteristics. The system also includes a data collector file that stores the recorded network characteristics for playback on a playback machine. Independent claim 16, 20, 34, 39 and 40 also include this feature.

Conversely, Dantressangle merely discloses a method and a system that uses pre-defined test files located on the client computers to stress test a server. Specifically, as shown in FIGS. 2-4 of Dantressangle, there is disclosed a "configurable stresser 200 [that] resides at the client or simulated client UNIX machine 102" (col. 5, lines 62-63). "Initially, a user generates a test guide file 402 that contains the instructions for testing the Web server 104" (col. 5, lines 66-67). The "test guide file 402 is a text file . . . that centralizes all the information necessary for the testing/stressing process" (col. 7, lines 31-33). As shown in FIG. 9 of Dantressangle, "a user can specify the test guide file 402 using a list box 902" (col. 10, lines 57-58). Once the test guide file has been generated by user selection, each

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"virtual Web browser 404 executes commands specified in the test guide file 402 by transmitting these commands to the Web server 104" (col. 6, lines 25-27). Thus, Dantressangle merely disclose pre-defined test files located on the client computers to stress test a server. Nowhere does Dantressangle disclose the Appellants' claimed record module.

Because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Dantressangle, the Appellants respectfully submit that the rejection of independent claims 1, 16, 20, 34, 39 and 40 under 35 U.S.C. § 102(e) as being anticipated by Dantressangle has been overcome based on the arguments and analysis set forth above. Moreover, rejected claims 2-5 and 10-15 depend from independent claim 1, rejected claims 18 and 19 depend from independent claim 16, rejected claims 21-23 and 28-33 depend from independent claim 20, and rejected claim 35 depends from independent claim 34 and therefore also are novel over Dantressangle (MPEP § 2143.03).

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#### Dependent Claims 6 & 7

Dependent claim 6 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 1 and further includes having the record module include a log restriction/rolling module that is capable of limiting a size of the data collector file that stores the recorded network characteristics.

In contrast, Dantressangle does not disclose any type of log restriction/rolling module that is capable of limiting a size of the data collector file that stores the recorded network characteristics as claimed by the Appellants. Thus, because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Dantressangle, the Appellants respectfully submit that the rejection of dependent claim under 35 U.S.C. § 102(e) as being anticipated by Dantressangle has been overcome based on the arguments and analysis set forth above. Moreover, rejected claim 7 depends from claim 6 and therefore also is novel over Dantressangle (MPEP § 2143.03).



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**Dependent Claims 8, 17, 24 and 36**

Dependent claim 8 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 1 and further includes having the data collector file includes a log file, which stores header and tracking information, and a data file, which stores other types of data. Claims 17, 24 and 36 also include this claimed feature.

In contrast, Dantressangle does not disclose any type data collector file having a log file, which stores header and tracking information, and a data file, which stores other types of data. Thus, because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Dantressangle, the Appellants respectfully submit that the rejection of dependent claims 8, 17, 24 and 36 under 35 U.S.C. § 102(e) as being anticipated by Dantressangle has been overcome based on the arguments and analysis set forth above. Moreover, rejected claim 9 depends from claim 8, rejected claims 25-27 depend from claim 24, and rejected claims 37 and 38 depend from claim 36 and therefore also are novel over Dantressangle (MPEP § 2143.03).

**The Rejections of Claims 1-40 as Anticipated by Watanabe et al.**

It is the Appellants' position that Watanabe et al. lack at least one feature of the Appellants' claimed invention. Namely, Watanabe et al. is missing the Appellants' claimed record module having a filter residing on a server. As stated above, independent claims 1, 16, 20, 34, 39 and 40 of the Appellants' claimed invention each include or use a record module having a filter that resides on a server.

**Independent Claims 1, 16, 20, 34, 39 & 40**

Independent claim 1 of the Appellants' claimed invention includes a network simulation system for simulating network characteristics. The system includes a record module having a filter that resides on a server and records network characteristics. The system also includes a data collector file that stores the recorded network characteristics for playback on a playback machine. Independent claim 16, 20, 34, 39 and 40 also

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include this feature.

In contrast, Watanabe et al. merely disclose a system and method for using a simulation machine to capture and play back communication information between a server and clients. In particular, a simulation machine is connected to a network (FIGS. 1A & 1B) in order to evaluate the network's performance (col. 5, lines 34-37). The simulation machine collects communication information on the network, extracts and determines the information needed to simulate the clients. This information is used by the simulation machine to perform a simulated procedure "such that a transaction according to the simulating procedure is executed between the simulator machine 16 and server 12 using the simulator machine 16 as one or a plurality of pseudo client. . ." (col. 5, lines 44-50). In other words, the simulator machine records the communication information, while the server merely receives the simulated requests from the simulator machine.

Thus, Watanabe et al. lack the Appellants' claimed record module having a filter that resides on a server. Because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Watanabe et al., the Appellants respectfully submit that the rejection of independent claims 1, 16, 20, 34, 39 and 40 under 35 U.S.C. § 102(b) as being anticipated by Watanabe et al. has been overcome based on the arguments and analysis set forth above. Moreover, rejected claims 2-5 and 10-15 depend from independent claim 1, rejected claims 18 and 19 depend from independent claim 16, rejected claims 21-23 and 28-33 depend from independent claim 20, and rejected claim 35 depends from independent claim 34 and therefore also are novel over Watanabe et al. (MPEP § 2143.03).

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#### Dependent Claims 6 & 7

Dependent claim 6 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 1 and further includes having the record module include a log restriction/rolling module that is capable of limiting a size of the data collector

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file that stores the recorded network characteristics.

In contrast, Watanabe et al. do not disclose any type of log restriction/rolling module that is capable of limiting a size of the data collector file that stores the recorded network characteristics as claimed by the Appellants. Thus, because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Watanabe et al., the Appellants respectfully submit that the rejection of dependent claim under 35 U.S.C. § 102(b) as being anticipated by Watanabe et al. has been overcome based on the arguments and analysis set forth above. Moreover, rejected claim 7 depends from claim 6 and therefore also is novel over Watanabe et al. (MPEP § 2143.03).

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#### Dependent Claims 8, 17, 24 and 36

Dependent claim 8 of the Appellants' claimed invention includes all of the above-mentioned features of independent claim 1 and further includes having the data collector file includes a log file, which stores header and tracking information, and a data file, which stores other types of data. Claims 17, 24 and 36 also include this claimed feature.

In contrast, Watanabe et al. do not disclose any type data collector file having a log file, which stores header and tracking information, and a data file, which stores other types of data. Thus, because the Appellants' claimed invention includes features neither taught, disclosed nor suggested by Watanabe et al., the Appellants respectfully submit that the rejection of dependent claims 8, 17, 24 and 36 under 35 U.S.C. § 102(b) as being anticipated by Watanabe et al. has been overcome based on the arguments and analysis set forth above. Moreover, rejected claim 9 depends from claim 8, rejected claims 25-27 depend from claim 24, and rejected claims 37 and 38 depend from claim 36 and therefore also are novel over Watanabe et al. (MPEP § 2143.03).

#### SUMMARY

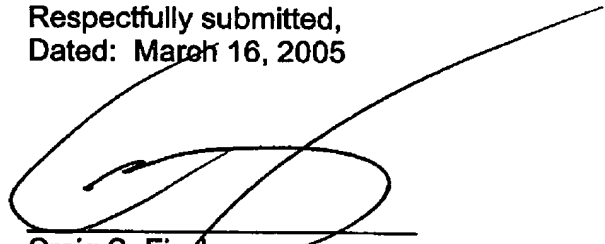
For the foregoing reasons, the Appellants submit that the Examiner's rejection of claims 1-40 was erroneous. Therefore, the Appellants respectfully request reversal of

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the Examiner's decision.

Respectfully submitted,  
Dated: March 16, 2005



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